Supreme Court, U.S.
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NO. 93-866

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

RANDALL DWIGHT SHOEMAKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the evidence of the non-testifying Defendant's prior record admitted through the count charging him with being a felon in possession of a firearm, the conviction on which was later reversed by the Fourth Circuit, unlawfully procured convictions on the other counts joined for trial, in plain violation of the Defendant's Fifth Amendment right against self-incrimination.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

RANDALL DWIGHT SHOEMAKER,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner Randall Dwight Shoemaker respectfully prays that a Writ of Certiorari issue to review the opinion and judgment on Mandate by the United States Court of Appeals for the Fourth Circuit on

October 20, 1990, styled United States of America v. Randall Dwight Shoemaker, 2 F.3d 53 (4th Cir. 1993).

PARTIES TO THE PROCEEDING

All parties to the proceeding in the court whose judgment is sought to be reviewed are contained in the caption of the case before this Honorable Court.[1]

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[1]There was one codefendant, Larry Johnson Norman, who did not petition for rehearing after his conviction was affirmed by the Fourth Circuit. Counsel for Norman has been served with a copy of this Petition.

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OPINION BELOW

The Published opinion of the court of appeals, styled United States of America v. Randall Dwight Shoemaker, 2 F.3d 53 (4th Cir. 1993), was entered on August 5, 1993. A copy of the opinion is attached hereto as Appendix A.

On October 13, 1993, the court of appeals denied appellant's suggestion for rehearing en banc. A copy of the order is attached hereto as Appendix B.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the United States Court of Appeals for

the Fourth Circuit was entered on August 5, 1993. Thereafter, on October 13, 1993, appellant's suggestion for rehearing en banc was denied. This petition is filed within ninety (90) days from the date of the denial of said suggestion. SUP.CT.R. 13.4 Jurisdiction of this Court to review the judgment in question through certiorari is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a captial or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

STATEMENT OF THE CASE

Randall Dwight Shoemaker was convicted on all counts of a five count bill of indictment. Count three charged him as follows:

COUNT THREE

> On or about December 17, 1990, in Alexander County, within the Western District of North Carolina, RANDALL DWIGHT SHOEMAKER having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, that is, voluntary manslaughter in the Iredell County Superior Court, Statesville, North Carolina, for which he received a term of imprisonment of six years on April 18, 1985, did knowingly, willfully, and unlawfully possess a firearm in and affecting interstate commerce, to wit, one or more of the following: a Winchester .22 caliber rifle, serial number B855187; a Winchester

> .22 caliber rifle, serial number 624580; a Stevens 12 gauge shotgun, no serial number; a Smith & Wesson .38 caliber revolver, serial number 24K0850; a Ruger .357 magnum revolver, serial number 30-56827; in violation of Title 18, United States Code, Sections 922(g)(1) and 924.

18 U.S.C.§ 922(g)(1) The opinion of the Fourth Circuit reversed the conviction for felon in possession of a firearm on count three.

Shoemaker filed and argued pre-trial motions to dismiss count three and in the alternative to sever the trial of count three from trial on the other four counts due to the prejudice arising from evidence about his prior state court

conviction. The Fourth Circuit reversed Shoemaker's conviction on count three on grounds the Defendant had argued in pre-trial motions but affirmed convictions on the remaining counts. An essential element of proof required for count three stated that Shoemaker had previously been convicted of a felony. Consequently, when the trial court informed the jury of the charges contained in the bill of indictment and during presentation of the case in chief, the incriminating status of Mr. Shoemaker as a prior felon was freely announced in the courtroom.

However, the conviction on count three of the indictment, which was the conduit for evidence about Shoemaker being a convicted felon, was reversed by the Fourth Circuit. Therefore, the issue remains unresolved concerning the prejudice emanating from evidence about that prior felony and the undeniable impact it had upon the jury as it deliberated on the other four counts. The Fourth Circuit never considered or addressed the remaining prejudicial impact of evidence presented on count three. The evidence of Mr. Shoemaker's prior state court conviction was not

admissible in the trial on any of the other counts.

Shoemaker did not testify in this trial. Character evidence and prior record of a non-testifying criminal defendant was not admissible in this trial. As a consequence of the trial court's denial of his pre-trial motions to dismiss or sever the 18 U.S.C.§ 922(g)(1) count, Shoemaker did not begin the trial with a "clean slate". As a consequence of the Fourth Circuit panel having failed to consider the error created by evidence presented on the reversed count, the trial judgment is flawed

by plain error under the Fifth Amendment protection against self-incrimination.

REASON FOR GRANTING THE WRIT

Evidence of the non-testifying Defendant's prior record admitted through the count charging him with being a felon in possession of a firearm, the conviction on which was later reversed by the Fourth Circuit, unlawfully procured convictions on the other counts joined for trial, in plain violation of the Defendant's Fifth Amendment right against self-incrimination.

I. THE FOURTH CIRCUIT OPINION IS AN INCOMPLETE DETERMINATION OF THE TRIAL ERRORS AND JUDGMENT IMPOSED UPON MR. SHOEMAKER.

The issue of prejudicial joinder of a 18 U.S.C.§ 922(g)(1) count with other counts in an indictment has not been addressed in any case where the 922(g)(1) judgment of conviction has been reversed and the remaining counts affirmed. The existing decisions affirm convictions on 922(g)(1) counts tried jointly with other counts, finding no improper joinder. United States v. Silva, 745 F.2d 840 (4th Cir. 1984)

This case is beyond mere considerations of joinder. Reversal of count three by the Fourth Circuit establishes that the evidence presented on count three of Shoemaker's state court felony conviction had no place in the trial of this case. Shoemaker's status as a convicted felon is not an element of any offense charged in counts one, two, four or five. In the case at hand, the court is presented with a unique question by reason of reversal of the 922(g)(1) count. No other case presents the situation wherein the felon in possession count of the indictment has been

reversed and the remaining counts affirmed. The panel, in reversing that count, refused to speak to the inescapable issue of the prejudicial errors from inadmissible self-incriminatory evidence presented through the 922(g)(1) count. Furthermore, it cannot be said that the evidence presented against Shoemaker on any count was in any sense overwhelming to the degree that the improper admission of his prior felon convictions through 922(g)(1) was "harmless error." This error was as harmful as any error could be to a criminal defendant -- the admission of his

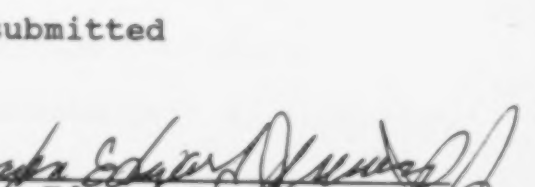
1985 conviction denied Shoemaker his Fifth Amendment right against self-incrimination. This Constitutional denial -- totally ignored by the panel -- must be addressed by the Court. The otherwise inadmissible evidence on the 922(g)(1) count -- now reversed by the opinion of the hearing panel -- leaves the remaining judgment of conviction tarnished by errors of constitutional magnitude: denial of the Defendant's Fifth Amendment privilege against self-incrimination and erosion of the Defendant's presumption of innocence.

The Fourth Circuit concisely reversed count three and abruptly ended the opinion without any consideration being given to the impact of the evidence presented on that count upon the atmosphere of the trial itself. The soot billowing from count three tarnished the entire trial and left a cinder in each juror's eye. The spectre of the prior felony conviction could not be escaped in the trial of this case and has resulted in a judgment which defies validity under the Fifth Amendment to the Constitution of the United States.

CONCLUSION

For the foregoing reasons, Petitioner prays this Honorable Court will issue a writ of certiorari and review the opinion below.

Respectfully submitted



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APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

United States of America,

Plaintiff-Appellee,

v. No. 92-5304

Randall Dwight Shoemaker,

Defendant-Appellant.

Appeals from the United States District Court for the Western District of North Carolina, at Statesville.

Graham C. Mullen, District Judge.

(CR-91-47-ST-MU)

Argued: February 5, 1993

Decided: August 5, 1993

Before RUSSELL and HALL, Circuit

Judges, and PAYNE, United States District Judge for the Eastern District of Virginia, sitting by designation.

Affirmed in part and reversed in part by published opinion. Judge Russell wrote the opinion, in which Judge Hall and Judge Payne joined.

COUNSEL

ARGUED: Edward Jennings, Taylorsville, North Carolina; Harold Johnson Bender, Charlotte, North Carolina, for Appellant Shoemaker; John Elbert Hall, Wilkesboro, North Carolina, for Appellant Norman. Thomas J. Ashcraft, United States Attorney, Charlotte, North Carolina,

for Appellee.

OPINION

RUSSELL, Circuit Judge:

Defendants Randall Shoemaker and Larry Norman were both convicted of various drug and firearm offenses in connection with a drug transaction at a Hardee's restaurant. Shoemaker was also convicted of drug and firearm offenses in connection with a later search of his home, which produced numerous guns and substantial evidence of drug trafficking.

Both appeal their convictions, raising a plethora of arguments. We reject all of these arguments except one: that the district court erred in

not dismissing Shoemaker's indictment under 18 U.S.C. § 922(g)(1) for having firearms in his home. Accordingly, we affirm in part and reverse in part.

I

Norman and Shoemaker were charged in the same five-count indictment. Counts One, Two and Three, respectively, charged Shoemaker, in connection with the search of his home, with possessing marijuana with intent to distribute, under 18 U.S.C.§ 841(a)(1), using and carrying a firearm in relation to the marijuana charge, under 18 U.S.C.§ 924(c), and possessing a firearm as a

convicted felon, under 18 U.S.C.§ 922 (g)(1). Counts Four and Five, respectively, charged both Norman and Shoemaker, in connection with the transaction at Hardee's, with conspiring to possess marijuana with intent to distribute, under 21 U.S.C.§ 846, and using and carrying a firearm in relation to a marijuana conspiracy, under 18 U.S.C.§ 924(c).

Shoemaker moved to dismiss Count Three of the indictment on the ground that section 922(g)(1) did not apply to his possession of firearms in his home. The district court denied the motion and submitted all five counts

to the jury. Shoemaker was convicted on all five counts; Norman was convicted on Counts Four and Five. Both appeal.

II

Shoemaker contends that the district court erred in not dismissing Count Three, which charged that his possession of firearms in his home violated 18 U.S.C.§ 922(g)(1)'s prohibition against possession of firearms by a convicted felon. We agree.

Section 922(g)(1) prohibits "any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one

year" from possessing a firearm in interstate commerce. "[C]rime punishable by imprisonment for a term exceeding one year" is defined in section 921(a)(20), which provides in part:

> Any conviction . . . for which a person . . . has had civil rights restored shall not be considered [a crime punishable by imprisonment for a term exceeding one year] for purposes of this chapter, unless such . . . restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C.§ 921(a)(20).

It is uncontested that Shoemaker was convicted of manslaughter in North Carolina and sentenced to six years imprisonment, and that his

civil rights were restored following his conviction. Shoemaker, thus, cannot be indicted under section 922(g)(1) for possessing a firearm unless his restoration of civil rights "expressly provide[d] that [he could] not ship, transport, possess, or receive firearms." Whether his restoration did so "expressly provide" is the only issue before us.

We have previously held that in determining whether a defendant's restoration "expressly provide[d] that [he could] not ship, transport, possess, or receive firearms," a court must examine not only the state's certificate granting

restoration of civil rights, but the actual effect of the restoration under the state's firearms laws on the defendant's ability to ship, transport, possess, or receive firearms. United States v. Essick, 935 F.2d 28, 30 (4th Cir. 1991); United States v. McLean, 904 F.2d 216, 218 (4th Cir.), cert. denied, 498 U.S. 875 (1990). It is often unclear from examining the restoration certificate and the underlying state law, however, whether the defendant's restoration "expressly provides that he may not ship, transport, possess, or receive firearms," because frequently the

restoration limits the defendant's firearm privileges partially but not completely. In confronting this ambiguity, we do not write on a clean slate; we have addressed it in several of our prior cases.

In McLean, the defendant, who had been previously convicted of a drug felony but had had his civil rights restored, was charged with violating section 922(g)(1) by carrying a handgun. The defendant's restoration certificate indicated that it did not entitle him "to own, possess, receive, buy, or otherwise acquire firearms of any description." Id. at 217. Under North Carolina law,

however, he was entitled to possess firearms over a certain length and to possess any type of firearm in his home or business, and all restrictions on his firearm possession ceased after five years. Id. at 218-19 & n.4. Thus, looking both to his certificate and state law, id. at 218, the defendant's restoration provided that he could not possess firearms under a certain length outside of his home for five years. The only issue in the case was whether the defendant's restoration had placed him within the section 921(a)(20) exception to section 922(g)(1); his restoration

did place him within this exception to 922(g)(1) unless it "expressly provide[d] that [he could] not ship, transport, possess, or receive firearms."

We did not resolve whether this restoration "expressly provide[d] that [he could] not ship, transport, possess, or receive firearms" by answering simply "yes" or "no." Instead, we focused on the underlying section 922(g)(1) charge and examined whether the conduct that the government alleged violated section 922(g)(1) was conduct that was expressly prohibited by the restoration. Id. at 219. Because "[t]he

facts alleged . . .-that McLean was carrying a handgun within five years of his release from prison-f[e]ll squarely within the express provisions" of the restoration, id., we concluded that, for the purposes of that particular case, the defendant's restoration did "expressly provide that [the defendant could] not ship, transport, possess or receive firearms" within the meaning of section 921(a)(20).Id.

We followed the same approach in Essick and United States v. McBryde, 938 F.2d 533 (4th Cir. 1991). Both of these cases involved defendants who had previously been convicted of

felonies but had had their civil rights restored under terms identical to the defendant's restoration in McLean. In Essick, we stated that for the government to make the necessary showing under section 921(a)(20) that the defendant's restoration "expressly provide[d] that [the defendant could] not ship, transport, possess or receive firearms," it had to demonstrate that the restoration prohibited the defendant from possessing firearms in the same manner for which he was charged under section 922(g)(1). Essick, 935 F.2d at 31. Because the defendant's restoration only prohibited the

defendant from possessing firearms for five years and the government did not allege that the possession for which he was charged under section 922(g)(1) occurred within five years of the restoration, we held that the government failed to demonstrate that the restoration "expressly provide[d] that [the defendant could] not ship, transport, possess or receive firearms" within the meaning of section 921(a)(20). Id. Similarly, in McBryde we found that the government failed to show that the defendant's restoration "expressly provide[d] that [the defendant could] not ship, transport, possess

or receive firearms" because the restoration did not prohibit possessing firearms in the manner for which he was charged in that case under section 922(g)(1). McBryde, 938 F.2d at 533; see also United States v. Haynes, 961 F.2d 50, 51-53 (4th Cir. 1992).

Applying the analysis of McLean, Essick, and McBryde to the case at bar is straightforward. Shoemaker's restoration certificate stated that it did not entitle him to "own, possess, receive, buy, or otherwise acquire firearms of any description." Under North Carolina law, however, he was entitled to possess firearms over

a certain length and to possess any type of firearm in his home or business, and all restrictions on his possession of firearms ceased after five years.N.C. Gen. Stat. 14-415.1(a) (1986). Thus, as did the restorations in McLean, Essick, and McBryde, Shoemaker's restoration provided that he could not possess firearms under a certain length outside of his home for five years.

To determine whether his restoration "expressly provide[d] that [he could] not ship, transport, possess or receive firearms" within the meaning of section 921(a)(20), we must examine the section 922(g)(1)

charge against Shoemaker and determine whether the conduct that the government alleged violated section 922(g)(1) was conduct that was prohibited by his restoration. McLean, 904 F.2d at 219. The government does not dispute that Shoemaker was charged under section 922(g)(1) with possessing firearms in his home. Nor does it dispute that his restoration did not prohibit him from possessing firearms in his home. Thus, Shoemaker's restoration did not "expressly provide that [he could] not ship, transport, possess or receive firearms" within the meaning of section 921(a)(20), and section

921(a)(20) exempted Shoemaker from the provisions of section 922(g)(1). As a result, the district court erred in denying Shoemaker's motion to dismiss Count III, which charged him with violating section 922(g)(1) by possessing firearms in his home.*

III

For the reasons stated, we reverse Shoemaker's conviction on Count Three, but affirm his convictions on Counts One, Two, Four, and Five and affirm Norman's convictions on Counts Four and Five.

AFFIRMED IN PART, REVERSED IN PART

*Shoemaker and Norman make several other contentions as well.

Shoemaker argues that there was insufficient evidence to convict him on any of the counts charged and that Counts One, Two and Three were improperly joined with Counts Four and Five. Norman argues that there was insufficient evidence to convict him on Counts Four and Five and that, in any event, he was entitled to a new trial because the jury heard certain inadmissible evidence which prejudiced him. After reviewing the record and the briefs, we reject all of these contentions.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RECORD NO. 92-5304

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
V.
RANDALL DWIGHT SHOEMAKER,
Defendant-Appellant

PETITION FOR REHEARING IN BANC

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF NORTH CAROLINA
AT STATESVILLE

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Randall Dwight Shoemaker

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
v.	)	No. 92-5304
RANDALL DWIGHT SHOEMAKER,	)	PETITION FOR REHEARING IN BANC
Defendant-Appellant.	)	

TO: The Honorable United States Court of Appeals for the Fourth Circuit:

The appellant, Randall Dwight Shoemaker, respectfully submits that the opinion, decided August 5, 1993, reversing his conviction on one count overlooked both material facts of the case and significant legal issues bearing upon related counts in the bill of indictment and consequently,

the judgment entered against him.

The opinion reversed the conviction for felon in possession of a firearm under 18 U.S.C.§ 922(g)(1). It affirmed all other counts. The 922(g)(1) count resulted from a search of Shoemaker's residence on December 17, 1990. Count three of the indictment, the reversed 922(g)(1) count, specifies five firearms. The same five firearms are specified in count two, affirmed on 924(c)(1). The use of identical weapons in two counts of the same bill of indictment compounded the effect of evidence admitted against

Shoemaker in an impermissibly prejudicial manner. By coupling the 922(g)(1) and 924(c)(1) counts over the same weapons, the government was allowed to inform the jury that Mr. Shoemaker, who did not testify at the trial, was a convicted state court felon from a 1985 manslaughter conviction. Without the 922(g)(1) count in the indictment, the jury would never have been presented with information of the felonious manslaughter conviction. To ignore the impact of this presentation on the jury is to deny Shoemaker a fair trial on the remaining counts. His presumption of innocence was totally

eroded by the reading of count three and the government's reference to Shoemaker's status throughout the trial. Character evidence of a non-testifying criminal defendant is not admissible under any circumstances.

Shoemaker made pre-trial motions to sever and to dismiss the 922(g)(1) count on the identical argument that the court held to require reversal of count three. Since this count carried only a penalty of two years imprisonment, the government did not need the 922(g)(1) conviction to enhance sentencing. The only reason the government argued and convinced

the trial court to retain the 922(g)(1) count was the prejudicial impact of Shoemaker's 1985 felonious manslaughter conviction.

As a consequence of the trial court's denial of Shoemaker's pre-trial motion to dismiss the 922(g)(1) count, Shoemaker did not begin the trial with a "clean slate." The prejudice from this improper joinder spilled over onto the remaining counts and created an atmosphere wherein Shoemaker could not and did not receive a fair trial on only admissible evidence.

The opinion of this court does not address the evidentiary issues

that arise from the improper 922(g)(1) count. This court must recognize how improper joinder precluded a fair trial. Even though the opinion gives short shrift to the conspiracy issues, there is not sufficient evidence that Shoemaker joinder or furthered any claimed alleged conspiracy with Norman. No word or deed of Shoemaker establishes the alleged conspiracy. The closeness of sufficiency of the evidence issue on the conspiracy count was removed from the factual scrutiny that issue deserved by the introduction that Shoemaker was a convicted felon and hence a "bad

man". The record evidence establishes that no statement made by Shoemaker was ever presented as evidence, that no money or marijuana ever was exchanged by any witness or defendant in the case, and that the issue of agreement is tenuous at best. What a jury would have decided in the absence of the improper 922(g)(1) count is the haunting but unresolved issue which the hearing panel and the opinion have not addressed. Due process requires that the opinion speak to the impact of the improperly joined 922(g)(1) count on Shoemaker's right to a fair trial. In retrospect, it cannot be concluded

that the 922(g)(1) evidence of Shoemaker's state court conviction did not contribute directly to his conviction on counts one, two, four and five.

The issue of prejudicial joinder of a 922(g)(1) count with other counts in an indictment has not been addressed in any case where the 922(g)(1) judgment of conviction has been reversed and the remaining counts affirmed. The current state of the case law has been to affirm the 922(g)(1) counts along with the other counts, finding no improper joinder. United States v. Silva, 745 F.2d 840 (4th Cir. 1984) In the case

at hand, the court is presented with a unique situation by reason of reversal of the 922(g)(1) count. The panel, in reversing that count, did not speak to the inescapable issue of the prejudicial impact of the self-incriminatory evidence presented through the 922(g)(1) count. Furthermore, it cannot be said that the evidence presented against Shoemaker on any count was in any sense overwhelming to the degree that the improper admission of the 922(g)(1) was "harmless error." This error was as harmful as any error could be to a criminal defendant -- the admission of his 1985 conviction

denied Shoemaker his Fifth Amendment right against self-incrimination. This Constitutional denial -- totally ignored by the panel -- must be addressed by the U.S. Court of Appeals For the Fourth Circuit In Banc. The improper joinder for trial of the 922(g)(1) count -- now vacated by the opinion of the hearing panel -- leaves the remaining judgment of conviction tarnished by errors of constitutional magnitude: denial of the Defendant's Fifth Amendment privilige against self incrimination and erosion of the Defendant's presumption of innocence.

CONCLUSION

The proper remedy given the reversal of the 922(g)(1) count is for Mr. Shoemaker to be granted a new trial on the remaining counts free from the prejudice of the 922(g)(1) presentation.

Respectfully submitted, this the _____ day of August, 1993.

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Attorney for Appellant-Shoemaker

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petition for Rehearing In Banc was mailed, First Class United States postage, to Jerry Wayne Miller, United States Attorney for the Western District of North Carolina, this the _____ day of August, 1993, properly addressed as follows:

Mr. Jerry Wayne Miller
United States Attorney
Western District of North Carolina
401 West Trade Street
Charlotte, North Carolina 28202
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EDWARD JENNINGS
Attorney at Law

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 13, 1993

No. 92-5304
CR-91-47-ST-MU

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RANDALL DWIGHT SHOEMAKER

Defendant - Appellant

On Petition for Rehearing with

Suggestion for Rehearing In Banc

The appellant filed a petition for rehearing with suggestion for rehearing in banc. No member of the Court requested a poll on the suggestion for rehearing in banc, and the original judicial panel votted to deny the petition for rehearing.

The Court denies the petition for rehearing with suggestion for rehearing in banc.

Entered at the direction of Judge Russell, with the concurrence of Judge Payne. Judge Hall dissents.

For the Court,
/s/ Bert M. Montague

CLERK

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
October 20, 1993

No. 92-5304
CR-91-47-ST-MU

US v. Shoemaker

No. 92-5305
CR-91-47-ST-MU

US v. Norman

M A N D A T E

The judgment of this Court dated

8/5/93 takes effect today.

BERT M. MONTAGUE
CLERK